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SENATE

REPORT
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ANTI-APARTHEID ACTION ACT OF 1985

JUNE 28, 1985.—Ordered to be printed

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Mr. LUGAR, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany S. 995]

The Committee on Foreign Relations, to which was referred the bill (S. 995) to express the opposition of the United States to the apartheid policies of the Government of South Africa and to encourage South Africa to abandon such policies, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of S. 995 is to demonstrate American opposition to apartheid through assistance to black South Africans and the imposition of sanctions against the Government of South Africa.

MAJOR PROVISIONS

S. 995 provides $15 million per year for scholarships for black South Africans, $5 million of which is designated for black educators, to attend schools in South Africa; and $1.5 million annually for the U.S. human rights program in South Africa, 20 percent of which is reserved for legal defense of those prosecuted for political reasons; directs all U.S. Government agencies to assist businesses majority-owned by black South Africans; authorizes the Overseas Private Investment Corporation (OPIC) to operate in South Africa; directs the Export-Import Bank to encourage the use of its facilities by black majority-owned businesses in South Africa; and makes the Sullivan Principles mandatory for the U.S. Embassy and U.S. companies operating in South Africa; places an immediate ban on

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loans to the Government of South Africa and its parastatals, on the sale of computers and computer-related goods and technology to South African Government agencies enforcing apartheid, and on nuclear trade between the United States and South Africa; and states that it shall be American policy to impose additional economic and political sanctions against the Government of South Africa within 18 months if the President determines that significant progress has not been made toward ending apartheid.

Committee Action

The following bills related to American policy toward the Republic of South Africa were referred to the Committee on Foreign Relations:

S. 147—The South African Human Rights Act of 1985, introduced on January 3, 1985 by Senators Proxmire, Levin, Sarbanes and Hart;

S. 995—The Anti-Apartheid Action Act of 1985, introduced on April 24, 1985 by Senators Lugar, Mathias and Dole;

S. 1020—The United States-South Africa Relations Act of 1985, introduced on April 26, 1985 by Senators Roth and McConnell; and

S. 1228—The United States-South Africa Relations Act of 1985, introduced on June 3, 1985 by Senators Roth, McConnell and Dodd.

In support of its responsibilities with respect to these bills, the Committee held three hearings on American policy toward the Republic of South Africa. The following witnesses testified:

Senators McConnell, Weicker and Kennedy and Assistant Secretary of State Chester A. Crocker on April 24, 1985;

Dr. Chester A. Crocker on May 2, 1985; and Randall Robinson, Executive Director, Transafrica; The Honorable Andrew Young, Mayor, the City of Atlanta; Thomas Donahue, Secretary-Treasurer, AFL–CIO; Michael Samuels, Vice President, Chamber of Commerce; Paul Murphy, Vice President, National Foreign Trade Council; and Vernon Holmes, Vice Chairman, Sentry Insurance Company on May 22, 1985.

The Committee met to consider legislation on South Africa on June 4, 1985. It first adopted as the working text a modified version of S. 995, the Anti-Apartheid Action Act of 1985. The major difference between S. 995 as introduced on April 24 and the Committee's working text was a change in the Statement of Principles to incorporate the Principles approved in 1984 by both the House and the Senate during consideration of the Export Administration Amendments Act which died in session.

The Committee then considered an amendment offered by Senator Cranston to delete section 11 of the bill and substitute in its place the language of S. 635, the Anti-Apartheid Act of 1985, which had been referred to the Committee on Banking Housing, and Urban Affairs. This amendment would prohibit new loans to the South African Government and its parastatals; place a conditional ban on new U.S. investment in South Africa, including bank loans, and on the importation of South African gold coins into the United States; and prohibit the sale of computers and computer-related

goods and technology for servicing to the Government of South Africa. The amendment failed by a vote of 7 to 9. Voting in the affirmative were: Senators Pell, Biden, Sarbanes, Cranston, Dodd, Eagleton, and Kerry. Voting in the negative were Senators Lugar, Helms, Mathias, Kassebaum, Boschwitz, Pressler, Murkowski, Trible, and Evans. Senator Zorinsky did not vote.

The Committee then considered an amendment offered by Senator Dodd to add to the bill sections 11, 13, and 15 of S. 1228, the United States-South Africa Relations Act of 1985. These sections would prohibit new loans to the South African government and its parastatals, prohibit the sale of computers and computer-related goods and technology to those agencies of the South African Government directly responsible for enforcing apartheid, and ban further American export of nuclear supplies, technology, and services to the Republic of South Africa until that country has signed the Nuclear Non-Proliferation Treaty. This amendment was accepted by a vote of 12 to 5. Voting in the affirmative were: Senators Mathias, Kassebaum, Trible, Evans, Pell, Biden, Sarbanes, Zorinsky, Cranston, Dodd, Eagleton and Kerry. Voting in the negative were Senators Lugar, Helms, Boschwitz, Pressler, and Murkowski.

The Committee adopted by consensus modified language for section 9 of S. 995 relating to the employment practices of U.S. firms in South Africa. As modified, section 9 requires U.S. firms with more than 25 employees in South Africa to adhere to the Statement of Principles in section 10 of the bill.

Senator Kassebaum proposed an amendment, accepted by the Committee without dissent, to reserve 20 percent of the funds made available under the Human Rights Grant program for legal assistance to victims of the apartheid laws and persons prosecuted for political reasons.

Discussion of the scholarship program established by the bill resulted in a Committee decision to maintain the proposed funding at $15 million.

The Committee also adopted an amendment by Senator Evans to indicate that the President shall through bilateral and multilateral negotiations seek to develop appropriate multilateral sactions against the Government of South Africa in the even significant progress is not made in eliminating apartheid.

At the suggestion of Senator Lugar, the section relating to the economic sanctions to be imposed if the President determines that significant progress has not been made in eliminating apartheid within 18 months, was modified to reflect the Committee's actions with respect to computer sales and bank loans to the South African Government and expanded by adding a broader category of "other economic or political actions." At the suggestion of Senator Pell, the withdrawal of most-favored-nation tariff treatment was added as a specific measure to be considered by the President.

The Committee then adopted and reported favorably S. 995, as amended, by a vote of 16 to 1. Those voting in the affirmative were Senators Lugar, Mathias, Kassebaum, Boschwitz, Pressler, Murkowski, Trible, Evans, Pell, Biden, Sarbanes, Zorinsky, Cranston, Dodd, Eagleton, and Kerry. Senator Helms voted in the negative.

BACKGROUND

The Afrikaner-based National Party came to power in South Africa in 1984 on a platform calling for "apartheid," that is, separation of the races. Under the apartheid policy, South Africa's 32 million people are divided into groups—White, African, Coloured (persons classified as "mixed race"), and Asian (primarily Indians)—and treated differently by virtue of race. Only the White population enjoys full political, social, and economic rights.

Since 1948 apartheid has become institutionalized through a variety of laws and administrative practices, and it includes fundamental restrictions on black South Africans' residence and movement, like the homelands policy, influx control and the pass laws, as well as the denial of equal political rights. In the last few years, the ruling National Party, under the leadership of P.W. Botha, has undertaken some reform of the apartheid system, giving urban blacks the right to elect local township authorities, repealing the Mixed Marriages and Immorality Acts, and implementing a new constitution that provides limited parliamentary representation for Coloured and Asians although not for Blacks. While these reforms are regarded by some in South Africa and the United States as signficant, they are seen by many, including many black South Africans, as limited measures which leave the fundamental structures of apartheid in place.

There has been continued unrest and mounting protests against the policy of apartheid in South Africa since the summer of 1984. In August and September violence broke out in several townships in response to rent increases, the existence of inferior educational facilities for blacks, and the constitutional reform which denies the black majority representation in the newly structured parliament. The government responded to the violence with force, and as a result, some 3,500 blacks were arrested, 1,000 were injured in clashes with the police, and nearly 200 were killed. In March 1985 at least 19 blacks en route to the funderal of a young black activist were killed by the South African police outside the city of Uitenhage in the eastern Cape Province. This incident spurred further protests and violence.

The South African government has continued to respond to the growing unrest in the black townships with force and has moved to suppress the anti-apartheid movement through a variety of actions including the detention of labor leaders and the indictment on the charge of treason of 16 leaders of the United Democratic Front, a coalition of some 700 organizations against apartheid. While moving against its internal critics, the South African Government sent a commando unit into Angola reportedly to destroy the jointly owned Angolan-Gulf Oil operation in Cabinda province, and also conducted a raid against the capital city of Botswana, allegedly to destroy sympathizers of the African National Congress.

In response to the killings at Uitenhage in March, the Foreign Relations Committee reported out S. 998, which requires the imposition of economic sanctions against the Government of South Africa if, within 2 years, significant progress has not been made toward ending the policy of apartheid. The Committee made it clear at that time that its action did not preclude further consider-

ation of legislation affecting American policy toward South Africa. S. 998 has been incorporated, with minor modifications, as section 14 of S. 995.

Committee Comments

The Committee recognizes that the United States has political and economic interests in South Africa and in the African region as a whole. The Committee believes that American interests and the stability of southern Africa will be promoted through peaceful change in South Africa and the establishment of a system that allows black South Africans to realize political, social and economic rights equal to those of the white community.

At the start of the Committee's consideration of legislation relating to American policy toward South Africa on June 4, the Chairman commented that the passion generated by the apartheid issue in the United States reflects the deep and longstanding opposition of the American people to inequality and injustice. The Committee is concerned that this opposition has not been conveyed clearly to the black community in South Africa. In view of this situation and the potential for increased unrest and violence in South Africa, the Committee believes that it is essential for the United States to make its opposition to apartheid clear and unequivocal and to take steps to induce the Government of Africa to move expeditiously and peacefully to dismantle its system of apartheid. The Committee believes that the bipartisan legislation which it has adopted, S. 995 as amended, will achieve these objectives by signaling the United States' willingness to assist South African blacks and its refusal to do business as usual with the South African Government while apartheid is in place.

SCHOLARSHIPS

Since fiscal year 1982, the U.S. Government has funded each year a $4 million scholarship program for black South Africans to study at American universities. Many black community leaders in South Africa have urged foreign governments to provide assistance for in-country education as well, arguing that the bulk of black students by necessity must be educated in South Afircan institutions. The provisions of this bill seek to respond to the stated desires and needs of the black community.

The possibilities for educational opportunities in-country are hampered by the high costs (relative to black family income), of school fees, books, school supplies, and mandatory school uniforms at the secondary school level. Because of these high costs, 95 percent of black school children drop out of school prior to the completion of standard 10 (final year of secondary school). The Committee's established practice has been to direct American assistance programs to the poorest of the poor in countries where the United States has aid programs. By authorizing programs at the secondary school level in its proposed programs in South Africa, the Committee is maintaining its practice of channeling American assistance to those who are most in need of aid.

One-third of the funds provided for scholarships is reserved for black educators to assist them to improve their professional creden-

tials. In 1977, over 85 percent of black teachers in South Africa had not completed high school and only 2.2 percent had obtained a university degree. In recent years, the number of black students attending school has increased, but the lack of qualified black teachers raises serious questions about the quality of education imparted. The Committee believes that improvement in black teacher qualifications will play a catalytic role in the overall state of black education in the future.

In establishing such an extensive secondary and university education program for black South Africans, the Committee is addressing one of the many evils of apartheid—inferior education for blacks. The Committee directs the executive branch to structure the program in such a way that it emphasizes the objective of combatting racism and apartheid. To the maximum extent possible the program should be used to foster increased participation in nonracial educational opportunities.

Selection of students for scholarships shall be the responsibility of a national panel or regional panels appointed by the U.S. Ambassador to South Africa. The Committee intends that these scholarships be awarded under circumstances that assure selections are made strictly on the basis of merit and need. Controversies have arisen in the past over the award of contracts to particular groups in South Africa to select and administer scholarships for black South Africans on the basis of a perceived political bias or favoritism by the contractor toward particular political viewpoints. It is the Committee's expectations that the selection process specified in the legislation will be sufficient to avoid such controversies in the future. In the highly polarized political environment of South Africa, the careful selection of panel members will be vital. The Committee expects that the American diplomatic representatives in South Africa will recruit panel members of high professionalism and with records of community service.

KASSEBAUM GRANTS

The State Department Authorization Act for Fiscal Years 1984 and 1985 created an experimental 2-year program to provide human rights grants directly to organizations in South Africa promoting a more just society or aiding victims of apartheid. S. 995 makes this program permanent and increases its funding by 50 percent to a level of $1.5 million per year.

The Committee is troubled by the excessive caution with which this program has been administered. The original legislation gave great discretionary authority to the executive branch with the expectation that originality and political relevance would be important criteria for the awarding of grants. In some cases, grants have been made for items such as word processing machines and services which are not clearly relevant to the purposes envisioned by the Committee when it authorized the program in 1983. To make its intention clear, the Committee adopted an amendment to S. 995 offered by Senator Kassebaum that would reserve 20 percent of the funds ($300,000) for direct legal assistance to persons being prosecuted for essentially political reasons in South Africa. Both Chairman Lugar and Subcommittee chairman Kassebaum have suggest-

ed to the Administration that such grants be given. In the absence of positive response by the State Department, legislation was considered necessary.

PROMOTION OF BLACK BUSINESS ENTERPRISES

An underlying principle of the system of apartheid is that black South Africans are permanently relegated to the roles of employees of the white minority. Systematic efforts by the South African Government to prevent the rise of black-owned enterprises, by denying blacks the right to own and manage businesses in the so-called white areas and by restrictions on black businesses in other areas, have made it impossible for blacks to challenge white economic hegemony.

Many black South Africans perceive the free enterprise system in terms of their own experience in which capitalism and racism are closely identified. The Committee hopes that by promoting black business enterprise, these perceptions can be changed.

The directive in S. 995 to promote black business enterprises applies to all operations of U.S. Government agencies conducted in South Africa. The Committee expects that the initial impact of this provision will be on the State Department's plans to purchase a new embassy chancellery in Pretoria under a lease/purchase agreement with a private entrepreneur. No efforts have yet been made to invite black business owners to submit a proposal to the Department of State to participate in this project either as the prime contractor or as subcontractors in the construction of the chancellery. The Committee believes that serious, good-faith efforts should be made by the State Department to assure a prominent role by black enterprise in the construction of the new chancellery. Major American owned businesses in South Africa have voluntarily adopted similar goals for their operations in South Africa. The U.S. Government should set an example in the acquisition of its new chancellery that will be a model for other American entities in the country.

Section 6 of the bill authorizes the Overseas Private Investment Corporation to issue insurance, reinsurance, and loan guaranties to promote joint ventures between business enterprises controlled or owned by nonwhite South Africans and business enterprises controlled or owned by U.S. nationals. This provision allows OPIC to provide such assistance in the absence of a bilateral agreement with the Government of South Africa. However, OPIC would remain subject to all other provisions of its statutory mandate, including those encompassed by section 231 of the Foreign Assistance Act, conducting its programs on a self-sustaining basis, and obtaining suitable arrangements to protect OPIC's interests in connection with any assistance.

CODE OF CONDUCT FOR EMBASSY OPERATIONS

In adopting a mandatory code of conduct for American corporations operating in South Africa, the Committee reviewed the conduct of the U.S. Government with respect to employment of South Africans. It discovered that certain remedial steps, including

changes in law, are necessary to bring the U.S. Government up to a desirable standard in this regard.

While no intentional racial discrimination influences the embassy's employment practices, the embassy is unable to meet the positive affirmative personnel practices of the best of American companies. For instance, under longstanding, worldwide State Department policy, local employees of the embassy are provided educational assistance only for courses that enable the employee to perform his or her present job better. In contrast, the Sullivan signatories offer training and education to employees to move into new career fields and to advance into senior positions in the company. They also offer assistance to employees to enroll their children in non-racial educational institutions.

Special attention must be paid to the employment practices for persons whose services are acquired by contract or through reimbursements under the official residence expense (ORE) allowances. Special efforts must be made to assure that contract and ORE employees receive treatment identical to that accorded Foreign Service National employees (FSNs) at the embassy. While many of the FSNs in South Africa are whites, almost all the contract and ORE employees are officially classified as Africans. The Committee believes that since apartheid has created racial distinctional between these groups of employees, special efforts to equalize their treatment are mandatory.

Concerns have been expressed by the State Department about the precedent established by this provision for employment practices elsewhere. The Committee believes that just as American firms operating in South Africa had to adopt special rules for their operations because of the system of apartheid, the U.S. Government must take into account the impact of the apartheid system in the operation of its embassy.

CODE OF CONDUCT FOR AMERICAN FIRMS

S. 995 mandates a code of conduct for American firms with over 25 employees in South Africa. This code, which is based on the private code of conduct known as the Sullivan Principles, is already widely accepted by the American business community in South Africa.

The Committee believes that American corporations operating in South Africa have a special obligation to conduct their operations in a manner that is consistent with the American foreign policy of combatting apartheid. Section 9 prohibits U.S. Government officials from interceding on behalf of the export marketing activities of firms which do not comply with the code of conduct in section 10. Section 9 does not prohibit the extenstion of credits or loan guarantees by the Export-Import or other U.S. Government agencies to foreign purchasers of products sold be the non-complying firm.

PROHIBITION ON NUCLEAR COOPERATION

It is generally believed that the Republic of South Africa already has the capacity to develop nuclear weapons. It has rejected repeated American exhortations to sign the Nuclear Non-Proliferation Treaty and to place all its nuclear facilities under full scope inter-

national inspection. In spite of this situation, limited nuclear cooperation is continuing between the United States and South Africa. The Committee believes that association in any form with the nuclear program of South Africa is detrimental to American foreign policy and national security interests and should be halted completely in the absence of South Africa's adherence to the Non-Proliferation Treaty.

COMPUTER SALES

Existing U.S. law does not prohibit the export of computer equipment to South Africa unless it is built to military specifications or specially designed for the manufacture of arms. A validated license is required and is usually denied under current Administration policy for the export of computers to military, police and certain other entities of the South African Government involved in the enforcement of apartheid, with three principal exceptions:

Items not controlled for national security purposes;

Personal computers that would not contribute to any military or police functions; and

Foreign-origin equipment incorporating 20 percent or less by value of U.S.-origin components.

The provision on computer exports to South Africa in S. 995 represents a major tightening of existing law. This provision prohibits the export, directly or indirectly, of computers, software, or goods and technology for servicing computers to the military, police, the national security agencies, the administering authority of the passbook system, and other entities of the South African Government that directly administer and enforce the policy of apartheid. This prohibition would be statutory and would eliminate the exceptions for computer exports allowed under current law. Violators would be subject to the full range of criminal and civil sanctions under the Export Administration Act including fines, imprisonment and suspension of export privileges.

Computer exports to the specified entities of the South African government are prohibited because their use by these entities could assist in maintaining the broad system or network of tracking people on the basis of color that is fundamental to the policy of apartheid. In the hands of these entities, U.S. computer equipment could be used in the direct administration or enforcement of apartheid. By statutorially proscribing exports to these particular entities, U.S. computers would not be available to those elements of the South African government that are principally responsible for the imposition of apartheid.

At the same time, it should be emphasized that the ban on computer exports is not designed simply to impose an economic sanction against the South African Government generally—a form of economic warfare with respect to computer equipment. On the contrary, the ban is directed against only those central government agencies, such as the military or police, that enforce apartheid or those central government agencies, such as the Department of Home Affairs and the Department of Cooperation and Development, that administer the black passbook system. Where U.S. computers function apart from the South African Government entities

that enforce or administer apartheid, in areas such as transportation, health, education or industry, the ban would not apply. In these areas, computer equipment often serves vital human, social and economic needs that benefit all people of South Africa, including the black majority. In these areas, there is no basis for distinguishing computer equipment from other types of U.S.-origin equipment.

PROHIBITION ON LOANS TO THE SOUTH AFRICAN GOVERNMENT

In approving S. 995, the Committee recommends to the Senate that bank loans to the Government of South Africa and its parastatals be prohibited. The Committee notes that the American Bankers Association recently recommended that its members refrain from extending credit to the Government of South Africa and that in making loans to the private sector in South Africa they consider the impact of their loans on the entire community. The Committee means the term "loan" to include an extension of credit as defined in section 201(h) of the Credit Control Act (12 U.S.C. 1901(h)).

Almost all major American banks have already determined as a matter of corporate social policy that they should cease to lend money to the Government of South Africa. While South African government foreign borrowing has increased overall in the past 4 years, the level of outstanding loans from American banks has fallen by more than 50 percent since 1978.

POLICY ON ECONOMIC SANCTIONS

Section 14 of S. 995 establishes American policy on the possible use of economic and other sanctions against South Africa in the event that significant progress has not been made in 18 months toward the elimination of apartheid. The bill would provide the President with considerable flexibility vis-a-vis the determination of progress by the Government of South Africa and vis-a-vis the selection of appropriate economic or other sanctions.

Under this section, sanctions recommended by the President are subject to expedited procedures through the legislative process. Congress retains its prerogatives with respect to legislative authority while the President retains his prerogatives with respect to approval of legislation.

South African officials and the Department of State argue that there is a process of reform underway in South Africa. The Committee believes that these arguments can be given credibility by prompt action on the part of the South African Government to allow black workers to live with their families, to abolish completely the pass laws, to terminate the migrant worker system, to allow unrestricted labor union rights to all, and to increase local investment in black education and training. It is the Committee's hope that substantial progress will be made in these areas during the next 18 months.

SECTION-BY-SECTION ANALYSIS

SECTION 1—FINDINGS AND DETERMINATIONS

Section 1 states that the policy and practice of apartheid harms the human rights of black South Africans, is repugnant to the moral and political values of democratic societies, and runs counter to American efforts to promote democratic forms of government. It further declares that it shall be American policy to promote peaceful change in South Africa through diplomatic means, but where necessary through other measures as well.

SECTION 2—DEFINITIONS

Section 2 defines the terms "national of the United States" and "South Africa." The latter term is defined to include all territory of the Republic of South Africa as declared in 1961. This definition includes the so-called "homeland," which are areas that the Government of South Africa is establishing as independent, sovereign states. No government, other than the South African Government, recognizes the independence of these homelands.

SECTION 3—SCHOLARSHIPS

Section 3 sets aside $15 million of the funds authorized for the Education and Human Resources account of the Agency for International Development for scholarships for black South Africans to attend South African universities, colleges and secondary schools. No less than $5 million of these funds is designated for scholarships for black educators to complete or improve their professional credentials. Selection of scholarship recipients is vested in a national panel or regional panels appointed by the U.S. Ambassador to South Africa.

SECTION 4—HUMAN RIGHTS FUND

Section 4 makes permanent section 116(c) (2) (A) of the Foreign Assistance Act of 1961 and increases the funding for these human rights grants to $1,500,000 annually. Twenty percent of the funds are reserved for legal defense of victims of apartheid. In addition, authority to make these grants is transferred to the Assistant Secretary of State for Human Rights and Humanitarian Affairs.

SECTION 5—EXPANDING PARTICIPATION IN THE SOUTH AFRICAN ECONOMY

Section 5 urges the U.S. Government to assist in all appropriate ways the realization by South African blacks of their rightful place in the South African economy. It further instructs the heads of U.S. executive agencies and departments to make affirmative efforts, to the maximum extent practicable, in conducting their operations in South Africa to procure goods and services from businesses majority owned by South African blacks.

SECTION 6—OVERSEAS PRIVATE INVESTMENT CORPORATION

Section 6 eliminates the need for the Overseas Private Investment Corporation to have a government-to-government agreement prior to conducting its operations in South Africa as long as the OPIC activities are conducted in support of joint ventures between American investors and black South Africans and as long as the national of the United States either holds a minority interest or agrees to relinquish its majority interest during the course of the joint venture.

SECTION 7—EXPORT-IMPORT BANK OF THE UNITED STATES

Section 7 instructs the Export-Import Bank to take active steps to encourage use of its facilities by business enterprises owned by black South Africans. It exempts such black-owned enterprises from the requirement of previous legislation that the Secretary of State certify that the enterprise is meeting the Sullivan code of corporate conduct.

SECTION 8—LABOR PRACTICES OF THE U.S. GOVERNMENT IN SOUTH AFRICA

Section 8 expresses the sense of the Congress that the labor practices of the U.S. Government for direct hire, Official Residence and long term contact employees should represent the best of American labor practices and should serve as a model for other American nationals employing South Africans. Heads of executive departments and agencies are directed to promptly take steps to ensure that their labor practices in South Africa meet the standards established in the Statement of Principles of section 10.

SECTION 9—EMPLOYMENT PRACTICES OF U.S. NATIONALS IN SOUTH AFRICA

Section 9(a) mandates adherence to the Statement of Principles in section 10 by all American nationals employing more than 25 employees in South Africa. Section 9(b) instructs the executive agencies not to intercede with foreign nationals in any country on behalf of the export marketing activities of firms not complying with the Principles.

SECTION 10—STATEMENT OF PRINCIPLES

Section 10 incorporates the code of conduct for U.S. Government operations for American nationals employing more than 25 employees in South Africa, as required by sections 8 and 9. The code is based on the Sullivan Principles, although modifications in those principles to make them consistent with U.S. domestic labor law have been adopted. The basic principles in the code are: desegregation of the races in employment facilities; equal employment for all employees without regard to race or ethnic origin; assuring pay systems are equitably applied to all employees without regard to race or ethnic origin; establishment of a minimum wage and salary structure based on an appropriate minimum level in the locality of employment; increasing the number of blacks in managerial, super-

visory, administrative, clerical and technical jobs by appropriate means; taking reasonable steps to improve the quality of employees' lives outside the work environment; and recognition of employees' right to organize labor organizations.

SECTION 11—NUCLEAR TRADE BETWEEN THE UNITED STATES AND SOUTH AFRICA

Section 11 prohibits the export of goods for technology to be used in any South African nuclear production or utilization facility, prohibits the authorization to engage, directly or indirectly, in production of special nuclear material in South Africa, prohibits the export to South Africa of component parts or other items or substances relevant because of their significance for nuclear explosive purposes, and prohibits the retransfer to South Africa of any of these goods, technology, special nuclear material, components, items or substances unless the Secretary of State certifies that South Africa has become a party to the Treaty on the Non-Proliferation of Nuclear Weapons.

SECTION 12—EXPORTS TO SOUTH AFRICAN GOVERNMENT

Section 12 amends the Export Administration Act to provide a total ban on sales of all computers to specified government agencies of South Africa that are directly engaged in the enforcement or administration of the policy of apartheid. These entities consist of the police and prison system, the military and national security agencies including military procurement and production authorities, and other entities of the South African Government that directly discriminate against non-whites by implementing the policy of apartheid through such means as the black passbook and the book of life systems.

The ban would apply to computers, software to run the computers, and the equipment and know-how necessary to service the computers. It would also extend to computers of U.S. origin, that is, computers that incorporate any U.S. parts or technology. Finally, the computer ban would not be exempt from any automatic termination provisions of the Export Administration Act.

SECTION 13—PROHIBITION ON LOANS TO THE SOUTH AFRICAN GOVERNMENT

Section 13 prohibits any national of the United States after the date of enactment of this Act from making any loan or extension of credit to the Government of South Africa or to any corporation owned or controlled by that government except for educational, housing, and health facilities available on a nondiscriminatory basis to all persons and located in an area accessible to all population groups.

SECTION 14—REPORT AND POLICY ON ECONOMIC SANCTIONS

Section 14 states that it shall be the policy of the United States to impose economic sanctions against the Government of South Africa if, within 18 months of enactment but not later than March 1, 1987, significant progress has not been made toward ending

apartheid. It directs the President to develop appropriate multilateral economic sanctions against the Government of South Africa through negotiations with other nations and to report annually to the Congress on the status of such negotiations. The section further requires the President to transmit to Congress by March 1, 1987, and annually thereafter, a report on the extent of progress made towards ending apartheid.

This report is to assess the extent to which the South African government has made progress in allowing black workers to be housed with their families, in abolishing the pass laws, in terminating the migrant labor system, in allowing unrestricted labor union rights for all, and in increasing investment in black education and training. In the event that the President determines that significant progress has not been made, a recommendation as to which of the following sanctions should be imposed: a ban on new commercial investment in South Africa, a ban on the importation of krugerrands, a denial of most-favored-nation tariff status to South Africa or other economic or political sanctions.

Once the report has been received, any of the sanctions identified in the bill may be enacted by a joint resolution of Congress. The resolution would be treated in the Senate under the expedited procedures provided in section 601(b) of the International Security Assistance and Arms Export Control Act of 1976. The section specifies that such resolution shall be treated as highly privileged in the House of Representatives.

Cost Estimate

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the Committee provides the following estimates of the cost of S. 995, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 11, 1985.

Hon. Richard B. Lugar,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 995, the Anti-Apartheid Action Act of 1985, as ordered reported by the Senate Committee on Foreign Relations on June 4, 1985. The bill expresses the opposition of the United States to the system of apartheid in South Africa, sets up mandatory guidelines for U.S. firms operating in South Africa, and imposes economic sanctions against the government of South Africa.

The economic sanctions restrict new loans and the sale of computers to the South African government and end nuclear cooperation between the United States and South Africa. Additional sanctions will be imposed if, within eighteen months, significant progress has not been made toward ending the policy of apartheid. The bill also requires the President to transmit annual reports to Congress expressing the progress that has been made toward ending apartheid and his recommendations for further sanctions.

Enactment of these sanctions and preparation of the reports as estimated to have no significant cost to federal, state, and local governments. Responsibility for implementation will be shared by the Departments of Commerce, State, and the Treasury. According to department staff, the bill will only marginally increase their workload, and costs can be absorbed within current budgetary levels. State and local governments will be unaffected by this since sanctions that required pension funds to divest have been omitted. CBO cannot estimate the indirect costs that might be borne by the federal government, for example, lower tax revenues from corporations.

The bill also requires mandatory compliance with the Sullivan Principles, which regulate working and living conditions of employees of U.S. firms in South Africa. Until enforcement procedures are more clearly defined, the State Department cannot estimate the cost of enacting these regulations but estimates that monitoring compliance will require an increase in manpower of approximately 10 to 30 people. CBO estimates that this increase in manpower could cost the State Department approximately $1 million annually.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT STATEMENT

In accordance with Rule XXVI of the Standing Rules of the Senate, the Committee has evaluated the regulatory impact of this bill. The regulations necessary to implement section 9 of the bill will regulate approximately 200 American businesses employing more than 25 persons in South Africa. The Committee believes that inasmuch as most of these companies are already participants in the privately initiated Sullivan Principles efforts, most businesses will not have to incur significant additional record keeping requirements.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is encolsed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in Roman):

The Foreign Assistance Act of 1961, as Amended

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PART I

Chapter 1—Policy; Development Assistance Authorizations

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Sec. 105. Education and Human Resources Development.—
(a) * * *

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(1)(b) Assistance provided under this section shall be used primarily to expand and strengthen nonformal education methods, especially those designed to improve productive skills of rural families and the urban poor and to provide them with useful information; to increase the relevance of formal education systems to the needs of the poor, especially at the primary level, through reform of curricula, teaching materials, and teaching methods, and improved teacher training; and to strengthen the management capabilities of institutions which enable the poor to participate in development. Assistance under this section shall also be provided for advanced education and training of people of developing countries in such disciplines as are required for planning and implementation of public and private development activities.

(2)(A) Beginning with the fiscal year 1986, and for each fiscal year thereafter, $15,000,000 of assistance provided under this section by the Administrator of the agency primarily responsible for administering this part of this Act shall be used in finance scholarships for black South Africans who are attending universities, colleges, and secondary schools in South Africa and who are seleted in accordance with subparagraph (B). Of the funds available under the preceding sentence to carry out this subparagraph, not less than $5,000,000 shall be available only for assistance to full-time teachers or other educational professionals pursuing studies toward the improvement of their professional credentials.

(B) Individuals for whom scholarships are financed under subparagraph (A) shall be selected by a national panel or by regional panels composed solely of members of the teaching profession appointed by the United States chief of diplomatic mission to South Africa. No such individual may be selected through any contract entered into with the agency primarily responsible for administering this part of this Act.

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Sec. 116. Human Rights.—(a) * * *

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(2)(A) Of the amounts made available to carry out this subsection $500,000 for the fiscal year [1984 and] *1984,* $1,000,000 for the fiscal year 1985, *and $1,500,000 for the fiscal year 1986, and for each fiscal year thereafter* shall be used for grants to nongovernmental organizations in South Africa promoting political, economic, social, juridical, and humanitarian efforts to foster a just society and to help victims of apartheid. *Grants under this paragraph shall be made by the Assistant Secretary for Human Rights and Humanitarian Affairs.*

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(f) Not less than 20 percent of the funds authorized to be appropriated by this section shall be used specifically to support human rights activities including, but not limited to, the investigation of the killing of protesters and prisoners in South Africa, legal assistance to persons prosecuted for fundamentally political reasons in South Africa, and church and legal assistance activities for the betterment of human rights in South Africa for disadvantaged persons, such assistance shall be made available through the Legal Re-

sources Center, the South African Council of Churches, the Black Sash, and other similiar organizations determined to be appropriate by the Secretary of State in consultation with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

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Chapter 2—Other Programs

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Sec. 237. General Provisions Relating to Insurance and Guaranty Program. [(a) Insurance *(a)(1) Except as provided in paragraph (2), insurance* guaranties, and reinsurance [193] issued under this title shall cover investment made in connection with projects in any less developed friendly country or area with the government to which the President of the United States has agreed to institute a program for insurance, guaranties, or reinsurance.

(2) Insurance, reinsurance, and guaranties of loans may be issued to cover a investment made in connection with a project in South Africa, notwithstanding the absence of an agreement with the Government of South Africa, if such investment is otherwise eligible under this title, except that—

(A) the issuance of any such insurance, reinsurance, or guaranty shall only be made to promote joint ventures between business enterprises controlled or owned by South African blacks or other nonwhite South Africans and business enterprises controlled or owned by United States nationals; and

(B) the national of the United States holds a minority interest or agrees to relinquish its majority interest during the course of the joint venture.

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Export-Import Bank Act of 1945, as Amended

Sec. 2. (a)(1) * * *

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(b)(1) (A) It is the policy of the United States to foster expansion of exports of manufactured goods, agricultural products, and other goods and services, thereby contributing to the promotion and maintenance of high levels of employment and real income to the increase development of the productive resources of the United States. To meet this objective in all its programs, the Export-Import Bank is directed, in the exercise of its functions, to provide guarantees, insurance, and extensions of credit at rates and on terms and other conditions which are fully competitive with the Government-supported rates and terms and other conditions available for the financing of exports of goods and services from the principal countries whose exporters compete with United States exporters. The Bank shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in Government-supported export financing and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce government sub-

sidized export financing. The Bank shall, on an annual basis, report to the appropriate committees of Congress its actions in complying with these directives. In this report the Bank shall include a survey of all other major export-financing facilities available from other governments and government-related agencies through which foreign exporters compete with United States exporters and indicate in specific terms the ways in which the Bank's rates, terms, and other conditions compare with those offered from such other governments directly or indirectly. Further the Bank shall at the same time survey a representative number of United States exporters and United States commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with United States exporters. The results of this survey shall be included as part of the annual report required by his subparagraph. The Bank shall also include in the annual report a description of each loan by the Bank involving the export of any product or service related to the production, refining, or transportation of any type of energy or the development of any energy resources with a statement assessing the impact, if any, on the availability of such products, services, or energy supplies thus developed for use within the United States.

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[(9) In] *(9)(A) Except as provided in subparagraph (B), in* no event shall the Bank guarantee, insure, or extend credit or participate in the extension of credit (a) in support of any export which would contribute to enabling the Government of the Republic of South Africa to maintain or enforce apartheid; (b) in support of any export to the Government of the Republic of South Africa or its agencies unless the President determines that significant progress toward the elimination of apartheid has been made and transmits to the Congress a statement describing and explaining that determination; or (c) in support of any export to other purchases in the Republic of South Africa unless the United States Secretary of State certifies that the purchaser has endorsed and has proceeded toward the implementation of the following principles: nonsegregation of the races in all work facilities; equal and fair employment for all employees; equal pay for equal work for all employees; initiation and development of training programs to prepare nonwhite South Africans for supervisory, administrative, clerical, and technical jobs; increasing the number of nonwhites in management and supervisory positions; a willingness to engage in collective bargaining with labor unions; and improving the quality of life for employees in such areas as housing, transportation, schooling, recreation, and health facilities.

(B) The Bank shall take active steps to encourage the use of its facilities to guarantee, insure, extend credit, or participate in the extension of credit to business enterprises in South Africa that are majority owned by South African blacks or other nonwhite South Africans. The certification requirement contained in clause (c) of subparagraph (A) shall not apply to exports to or purchases from busi-

ness enterprises which are majority owned by South African blacks or other nonwhite South Africans.

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Export Administration Act of 1979

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FOREIGN POLICY CONTROLS

Sec. 6. (a) Authority.—(1) * * *

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(l) EXPORTS TO SOUTH AFRICA.—(1) No computers, computers software, or goods or technology intended to service computers may be exported, directly or indirectly, to the following entities of the Government of South Africa:

(A) the military,

(B) the police,

(C) the prison system,

(D) the national security agencies,

(E) the administering authority for the black passbook and the book of life systems,

(F) the administering authority for the production and procurement of military equipment, and

(G) any other of the Government of South Africa that administers programs which directly discriminate against nonwhites.

(2) For purposes of paragraph (1), the term "computer" includes any computer that is the direct product of technology of United States origin.

(3) The termination provisions contained in section 20 of this Act shall not apply to this subsection, or to sections 11 and 12 of this Act to the extent such sections apply to violations of, and the enforcement of, this subsection.

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